

LOWENSTEIN SANDLER LLP

Michael J. McGaughey (198617)
390 Lytton Avenue
Palo Alto, CA 94301
Telephone: 415-288-4545
Fax: 415-288-4534
mmcgaughey@lowenstein.com

Steven M. Hecht (*pro hac vice*)
1251 Avenue of the Americas
New York, NY 10020
Telephone: 212-262-6700
Fax: 973-597-2381
shecht@lowenstein.com

*Counsel for Plaintiffs Special Situations
Fund III QP, L.P., Special Situations
Cayman Fund, L.P., and Wolverine
Flagship Fund Trading Limited*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SPECIAL SITUATIONS FUND III QP,
L.P., SPECIAL SITUATIONS
CAYMAN FUND, L.P., AND
WOLVERINE FLAGSHIP FUND
TRADING LIMITED,

Plaintiffs

vs.

H. RAVI BRAR, SUSIE HERRMANN
and MURRAY JONES,

Defendants.

) Case No. 3:14-cv-04717-SC

) **PLAINTIFFS' RESPONSE TO**
) **DEFENDANTS' REQUEST FOR**
) **JUDICIAL NOTICE**

) DATE: February 20, 2015

) TIME: 10:00 A.M.

) CTRM: 1, 17th Floor
) Hon. Samuel Conti

1 In an attempt to distract the Court from the well-pleaded allegations in the Complaint,
2 Defendants H. Ravi Brar, Susie Herrmann, and Murray Jones (collectively, “Defendants”) have
3 asked the Court to take judicial notice of fifteen documents outside the four corners of the
4 pleadings. (See Request for Judicial Notice in Support of Motion to Dismiss (Docket No. 18-2)
5 (citing to exhibits attached to the Declaration of Joseph B. Woodring (Docket No. 18-3)).) As
6 explained in detail in the Memorandum of Points and Authorities in Opposition to Defendants’
7 Motion to Dismiss filed herewith, these materials do not raise any disputes with the Complaint’s
8 allegations, and do nothing more than make the Court’s task more difficult by placing
9 voluminous and often irrelevant material before it.

10 Notwithstanding Plaintiffs’ disagreement with Defendants’ legal strategy, Plaintiffs do
11 not oppose Defendants’ request for judicial notice. Under well-established Ninth Circuit
12 standards, each document Defendants submit is either judicially noticeable or incorporated in
13 the Complaint by reference. See *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998) (“[A]
14 district court ruling on a motion to dismiss may consider a document . . . upon which the
15 plaintiff’s complaint necessarily relies.”), *superseded by statute on other grounds as stated in*
16 *McManus v. McManus Fin. Consultants, Inc.*, 552 F. App’x 713, 714 (9th Cir. 2014);
17 *Glenbrook Capital Ltd. v. Kuo*, 525 F. Supp. 2d 1130, 1137 (N.D. Cal. 2007) (noticing SEC
18 filings). Plaintiffs only caution that, as this Court has previously ruled, the contents of
19 documents that are judicially noticed or incorporated into the complaint by reference are not
20 assumed to be true and may not be considered as “contrary evidence” See Order Granting
21 Motion To Dismiss, *In re ECotality, Inc. Sec. Litig.*, No. 13-03791-SC, slip. op. at 9 (N.D. Cal.
22 Sept. 16, 2014); see also *Gammel v. Hewlett-Packard Co.*, No. SACV 11-1404 AG (RNBx),
23 2013 WL 1947525, at *3-4 (C.D. Cal. May 8, 2013); *In re Northpoint Commc’ns Group, Inc.*,
24 *Sec. Litig.*, 221 F. Supp. 2d 1090, 1095 (N.D. Cal. 2002) (declining to consider documents
25 submitted by defendants “for notice of disputed facts therein”).
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1 DATED: January 9, 2015

/s/ Michael J. McGaughey

2 Michael J. McGaughey

3 **LOWENSTEIN SANDLER LLP**

4 390 Lytton Avenue

5 Palo Alto, CA 94301

6 Telephone: 415-288-4545

7 Fax: 415-288-4534

8 mmcgaughey@lowenstein.com

9 *Counsel for Plaintiffs Special Situations Fund III*
10 *QP, L.P., Special Situations Cayman Fund, L.P.,*
11 *and Wolverine Flagship Fund Trading Limited*

9 Steven M. Hecht (*pro hac vice*)

10 **LOWENSTEIN SANDLER LLP**

11 1251 Avenue of the Americas

12 New York, NY 10020

13 Telephone: 212-262-6700

14 Fax: 973-597-2381

15 shecht@lowenstein.com